

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1327 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BABARBHAI MELABHAI RABARI

Versus

SHAMALBHAI HIRABHAI PATEL  
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Appearance:

MR BB NAIK for Petitioner

MR YS LAKHANI for Respondent No. 1

MR SR DIVETIA,APP for Respondent No. 7  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/09/98

C.A.V.JUDGMENT ;

Rule. Service of rule is waived by learned advocate Mr. Y.S.Lakhani on behalf of the opponent Nos. 1 to 6 and learned A.P.P.Mr.S.R.Divetia, on behalf of the opponent No.7-State.

The applicant who is the original complainant has filed this application under Section 439 (2) and under Section 482 of the Code of Criminal Procedure ("Code" for short ), with a prayer to quash and set aside the common order, dated April 4, 1998, passed by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar, in Criminal Misc. Application No.102 of 1998 and 110 of 1998, whereby the opponent Nos. 1 to 6 came to be released on bail in connection with the C.R.No. I 29/98, for the offence punishable under Section 302, 307, 147, 148, 149 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. According to the applicant, he is residing at village Bherunda and doing agricultural and cattle breeding work. The youngest brother of the applicant Maljibhai (deceased ) was the Chairman of the Milk Producers Cooperative Society of village Bherunda since last three years, he came to be murdered by the opponent Nos. 1 to 6. The applicant and the deceased Maljibhai were staying together with their mother. The opponent Nos. 1 to 6 had grudge and did not like Maljibhai as the Chairman of the Milk Producers Cooperative Society of village Bherunda. According to the complainant, even though the opponent No.1 had no right of way over the field of the applicant, was taking his bullock cart through the said field. Maljibhai time and again instructed the opponent No.1 not to take his bullock cart and other agricultural implements through the field. The opponent No.1 had filed criminal case against Maljibhai which is pending. It is the case of the complainant that the family members of opponent No.1 were having grudge against Maljibhai. It is alleged that before 10 days of the incident in question, the opponent No.1 had told the complainant that his three elder brothers had left the village, and if the applicant and his brother Maljibhai wanted to remain alive, they should also leave the village.

3. On the day of the incident which was incidently festival of Dhuleti i.e. March 13, 1998, at about 7-00 p.m., the complainant went to graze his camel in the sim of village through Naliya near village School. The complainant heard hue and cry near the Naliya, and therefore, he rushed to the said place and saw that opponent No.1 was armed with stick, opponent No.2 was armed with axe, opponent No.3 was armed with stick and were inflicting blows on the body of Maljibhai. Opponent No.4 was armed with stick and he inflicted blows on the head of the injured witness Manoharbhai who is the nephew of the complainant. The opponent No.5 was also armed with stick and he also inflicted blows on the injured witnesses Manoharbhai. It is the case of the complainant that opponent No.6 was pelting stones at Maljibhai. All the opponents were shouting "beat-beat, he should not escape ". When the opponent saw the applicant with stick in his hand, reaching the place of the incident, they ran away towards the village. One Talabhai Bhudarbhai who had followed the complainant came at the place of incident and he was requested by the complainant to stay at the place. The complainant went to Modasa to bring vehicle and to inform the police. Injured Maljibhai and Manoharbhai, were brought to Sarvajanic Hospital, Modasa, where Maljibhai was declared dead. As Manoharbhai had sustained serious injuries on his head, he was shifted to

Civil Hospital, Ahmedabad. The complainant, thereafter, lodged his first information report at Modasa Rural Police Station at 1-15 hours on 14-3-98, which came to be registered at C.R.No. I 29/98. After arrest of the opponents, they were remanded to judicial custody.

4. Opponent Nos. 5 and 6 filed an application for bail being Criminal Misc. Application No.102 of 1998 and the opponent Nos. 1 to 4 filed Misc. Criminal Application NO.110 of 1998 for bail, in the court of learned Addl. Sessions Judge, Himatnagar, camp at Modasa. Both these applications came to be consolidated and were disposed of by a common order, on April 4, 1998, whereby the learned Addl. Sessions Judge, Sabarkantha at Himatnagar released the opponent Nos. 1 to 6 on bail. The complainant has challenged the order of the learned Addl. Sessions Judge, releasing the opponent Nos. 1 to 6 on bail by filing this Misc. Criminal Application, on various grounds which will be dealt with during the course of this order.

5. When this application was placed for admission/hearing on 22-4-98, the Court ( Coram : A.K.Trivedi, J. ) issued rule against opponent Nos. 1 to 6. The opponent Nos. 1 to 6 have appeared and filed their affidavit in reply contesting this application, inter-alia, contending that the learned Addl. Sessions Judge had granted bail after perusing the police papers and considering the peculiar facts of the case by giving reasoned order. The learned Addl. Sessions Judge has also imposed suitable and appropriate conditions on the opponents while granting bail to them. That the opponents while on bail, till today, have not abused their liberty and have not tampered with the evidence, and, that the opponents have not antecedents and neither of them are involved in any criminal activity in past. It is submitted that the opponent No.1 Shamalbhai and opponent No.3 Sureshbhai had sustained serious injuries in the same incident for which a cross complaint is lodged at Modasa Rural Police Station being C.R.No. I 30/98, registered on 14-3-98 at 14-30 hours by one Chhayaben Harishbhai Patel for the offence punishable under Section 354, 323, 504 and 114 of IPC and Section 135 of B.P.Act. It is denied that the opponents and their family members were having grudge against the deceased Maljibhai and had given threats to the complainant. It is averred that the learned Addl. Sessions Judge had given cogent and convincing reasons for releasing the opponents on bail, keeping in mind the peculiar facts and circumstances of the case and the fact that the incident had taken place because the deceased Maljibhai and Manohabhai had tried to outrage the modesty of one Chhayaben who is the niece in law of the opponent

No.1. It is denied that the complaint of Chhayaben was filed after deliberation and as a counter-blast to the F.I.R. lodged by the complainant. It is stated that the deceased Maljibhai had attempted to outrage the modesty of Chhayaben by indecent behaviour, and therefore, the opponent No.1 and opponent No.3 had come to the rescue of Chhayaben and Maljibhai had given a stick blow on the head of the opponent No.1 and the injured Manoharbhai given a stick blow on the head of opponent No.3-Sureshbhai. After receiving the injuries on their heads, Shamalbhai and Sureshbhai had fallen down in bleeding condition. Chhayaben had run away towards the village and because of the shouts raised by her, a big mob had rushed towards the place of the incident and had beaten the deceased and Manoharbhai. It is submitted that the learned Addl. Sessions Judge had not exceeded his jurisdiction and had properly exercised his discretion by releasing the opponents on bail.

6. At the time of hearing of this application, the police papers of C.R.No.I 29/98, lodged by the complainant Badarbhai Melabhai and C.R.No. I 30/98 lodged by Chhayaben Harishbhai Patel, both lodged at Modasa Rural Police Station were called for and perused by this Court.

7. Learned counsel for the applicant Mr. B.B.Nayak has submitted that the learned Addl. Sessions Judge at the time of releasing the opponent Nos. 1 to 6 on bail had virtually discussed the entire evidence and passed an order of acquittal which is not permissible. That the learned Addl. Sessions Judge had unnecessarily given importance to the fact that the complainant was externed by the Competent Authority in January 1995. It is submitted that the observations of the learned Addl. Sessions Judge that the the prosecution has not explained injuries sustained by the opponent No.1 Shamalbhai and opponent No.3 Sureshbhai, and therefore, the opponents deserve to be released on bail are uncalled for at the stage of deciding the bail application. Learned counsel for the applicant has submitted that the learned Judge ought to have taken into consideration the nature and gravity of the circumstances in which the incident had taken place. It is submitted that the order of learned Addl. Sessions Judge is illegal and arbitrary because various considerations and factors were not borne in mind by the learned Addl. Sessions Judge at the stage of deciding the bail application. Learned counsel for the applicant further submitted that the learned Judge virtually by discussing the statement of witnesses recorded during the investigation, had prejudged the

trial by delivering the judgment of acquittal against the opponents, and therefore, the order of the learned Addl. Sessions Judge, granting bail in favour of the opponent Nos. 1 to 6 deserve to be quashed and set aside and the bail should be cancelled.

8. As against this, learned counsel for the opponent Nos. 1 to 6 has submitted that while deciding the prima facie case against the accused persons, the learned Judge was required to discuss the evidence collected during the investigation and if the learned Judge had discussed the prosecution evidence at the bail stage, it cannot be said that the Court had acted beyond its jurisdiction. It is submitted by the learned counsel for the opponents that when the bail application was decided, the investigation was practically completed and only formal charge sheet remained to be filed. It is submitted by the learned counsel for the opponents that when the complainant who claimed to be an eye witness had tried to suppress the genesis of the incident, the learned Judge was justified in appreciating the cross complaint and the statement of Chhayaben as against the allegations and the statements of the complainant and his witnesses. Learned counsel for the opponents further submitted that as a result of outraging modesty of Chhayaben by the deceased Maljibhai, the opponent No.1 and 3 came to her rescue, an attack was launched on the opponent Nos.1 and 3 by the deceased and Manoharbhai with sticks, and therefore, the deceased and Manoharbhai were aggressors. That thereafter, there was a free fight between the two groups, in which deceased Maljibhai and Manoharbhai had sustained injuries, and therefore, the learned Judge was justified in discussing the statements of the witnesses and had rightly granted bail to the opponents which cannot be cancelled bearing in mind that the deceased and Manoharbhai were the aggressors. Lastly it is submitted by the learned counsel for the opponents that the opponents were released on bail on April 4, 1998, and the learned Judge had imposed stringent conditions on the opponents at the time of releasing them on bail and the opponents had not abused their liberty till today and have complied with all the conditions, and therefore, bail granted in their favour may not be cancelled.

9. The Apex Court has laid down the principles that at the time of deciding the bail application, there should not be elaborate discussion of the prosecution evidence, least it might prejudiced either the accused or the prosecution, but at the same time, for arriving at the conclusion that prima facie case is established, some facts are required to be stated. In my view, bearing in mind the manner in which the incident had taken place,

and the fact that there were cross complaints, the learned Judge to some extent was justified in discussing the facts of both the cross-complaints. However, giving reasoning disclosing his mind while granting bail could not be considered a glaring mistake or impropriety so as to pass condemning remark and initiate action against concerned officer. ( See 1996 AIR SCW 2098 Kashi Nath Roy v. State of Bihar.)

10. The submission of the learned counsel for the applicant that at the stage of deciding the bail application, the learned Addl. Sessions Judge, has virtually discussed the entire evidence, collected during the investigation and passed the order of acquittal, which is not permissible, deserves consideration. It is settled principle that at the stage of deciding the bail application, it is not necessary to discuss the evidence particularly when the investigation is over and the charge sheet is not filed. The elaborate discussion at the stage of bail may cause prejudice either to the accused or the prosecution. Therefore, in my opinion, the learned Judge should have avoided the elaborate discussion of the prosecution evidence while deciding the bail application of the opponent Nos. 1 to 6. The learned Addl. Sessions Judge had given undue importance to the fact that the complainant i.e. applicant was externed by the Competent Authority in January 1995. The character and conduct of the complainant should not have commented upon. The character and conduct of the complainant can only be commented upon after he is examined at the trial. Therefore, the observations made by the learned Addl. Sessions Judge with regard to the character of the complainant will not carry any weight and those observations will have to be ignored by the Sessions Judge at the trial. Learned counsel for the applicant submitted that the order of the learned Addl. Sessions Judge is arbitrary, erroneous and illegal as the learned Addl. Sessions Judge had not taken into consideration the nature and gravity of the circumstances in which the incident has taken place. Learned counsel for the applicant in support of his submission relied upon the decision of State of Gujarat vs. Lalji Popat & Ors., reported in 1988 (2) G.L.R., page 1073. In the above decision, the High Court in the facts and circumstances of the case before it, held that if the Sessions Court grants bail illegally, erroneously or arbitrarily, without considering the relevant facts, then the High Court can quash and set aside the order passed by the Sessions Court by cancelling the bail. Learned counsel for the applicant in this connection also placed reliance on the decision State of Maharashtra v. Anand Chintaman Dighe, reported in A.I.R. 1991, SC, 1603. In

the said case, the Apex Court had cancelled the bail granted to the opponent on the grounds that the investigation prima facie showed that mafia-type terror and fear psychosis was created which led to the cold-blooded murder of Shridhar Khopkar. The Apex Court further held that the Designated Court had acted illegally in appreciating the statements of the witnesses and the material collected by the Investigating Officer at the investigation stage.

11. In this case there are cross complaints, one filed by the complainant and other filed by Chhayaben against the deceased Maljibhai and injured Manoharbhai. As per the complaint lodged by Chhayaben, on 13-3-98 at about 7-00 p.m. when she was returning from her agricultural field towards the village and when she reached near School, it is stated that her uncle in law Shamalbhai (opponent No.1) and Sureshbhai (opponent No.3) were following her towards the village. According to Chhayaben, deceased Maljibhai and injured Manoharbhai who were heavily drunk had assaulted her and tried to outrage her modesty. The deceased had caught hold of her hand and had told her that he wanted sexual relations with her. Injured Manoharbhai had uttered the words " today, she should not be allowed to escape ". Deceased had also placed his hand on her chest, and therefore, she raised shouts for help. Shamalbhai (opponent No.1) and Sureshbhai (opponent No.3) came to her rescue and both were beaten with sticks by the deceased Maljibhai and injured Manoharbhai. Therefore, prima facie, it appears that first incident had taken place when the deceased Maljibhai and injured Manoharbhai tried to outrage the modesty of Chhayaben. The deceased Maljibhai and injured Manoharbhai had first assaulted the opponent No.1 and opponent NO.3 by means of sticks and because of the injuries sustained by them on their head, they had fallen down. The investigation papers reveal that thereafter, Chhayaben had run towards the village by raising shouts, and thereafter many persons had come from the village side and had assaulted the deceased Maljibhai and injured Manoharbhai.

12. According to the complaint lodged by the complainant Babarbhai Melabhai, on 13-3-98 at 7-30 p.m., when he was returning to his house and when he came near the Naliya , he heard shouts, and therefore, he went towards Naliya and saw that all the opponents were armed with sticks and weapons and were causing injuries on the deceased Maljibhai and injured Manoharbhai. According to the complainant, the incident had taken place at 7-30 p.m., whereas according to Chhayaben, the first incident

had taken place at 7-00 p.m wherein the deceased Maljibhai and Manoharbhai had inflicted stick blows on the opponents Nos. 1 and 3. At this stage, appreciation of evidence of both the sides does not require elaborate discussion, but the court at the stage of deciding the bail application should borne in mind that there were cross complaints arising from the said incident and when both the sides have sustained injuries, it prima facie appears that there was some mutual quarrel between the parties, and during the course of this quarrel, the deceased Maljibhai sustained injuries on his head and other parts of the body and injured Manoharbhai had also sustained injuries. These facts prima facie show that the opponents had a good case to put forward before the court to acquit the opponents for the offence punishable under Section 302 of IPC.

13. Learned counsel for the applicant has submitted that the complaint lodged by Chhayaben was concocted and was filed after deliberations and the said complaint was a typed one, and therefore, no reliance should be placed on it. I have perused the original papers. The complaint filed by Chhayaben is not a typed one though it was lodged on 14-3-98 at about 14-30 hours i.e. after about 18 hours of the occurrence of the incident. It cannot be inferred that as the complaint of Chhayaben is lodged after 18 hours, the same is concocted. It should not be forgotten that Chhayaben is a unmarried woman and she would hesitate to file complaint at once more particularly when there was an incident to outrage her modesty. Therefore, I do not find any substance in the arguments of the learned counsel for the applicant that the complaint lodged by Chhayaben is typed one and concocted and was filed late after deliberations. The fact remains that in the said incident the opponent No.1 and opponent No.3 sustained injuries on their head by sticks blows inflicted by the deceased and Manoharbhai.

14. In my opinion, in the facts and circumstances of the present case, the decisions reported in A.I.R.1991,SC,1603 and 1988 (2) G.L.R.,1073, on which reliance is placed by the learned counsel for the applicant will not apply to the facts of the present case. In deciding the application for cancellation of bail, facts and circumstances of each case has to be borne in mind. No set formula can be applied to every case where a prayer for cancellation of bail is made. Only the broad principles are to be borne in mind. At this stage, it would be worthwhile to refer the decision of the Apex Court in case of Kashmira Singh v. Duman



Singh, reported in AIR 1996 SC, 2176, wherein the Apex Court observed that when there is a fight between two groups, which party had launched the attack would be a matter of evidence. Even assuming that the accused's side was the aggressor the fact, remains that there was casualty on both sides since both sides were armed. Whether a cross complaint was filed or not does not alter this factual reality. The possibility of the complainant's side namely the aggressor or there being a free fight cannot be overlooked altogether. The observations of the Apex Court in Kashmira Singh's Case, in my view, are in all fours applicable to the facts of this case. Admittedly in the present case, there is a cross-complaint and on both the sides there were casualties which side was the aggressor is to be decided at the trial. Therefore, in my view, the discretion exercised by the learned Addl. Sessions Judge cannot be said to be arbitrary, erroneous or illegal. It would not be out of place to say that the learned Addl. Sessions Judge should have avoided the elaborate discussion of the evidence of the prosecution. Therefore, the observations made by the learned Addl. Sessions Judge in his order dated 4-4-98 would not be of any bearing at the time of the trial.

15. Learned counsel for the applicant has also submitted that the learned Addl. Sessions Judge ought to have borne in mind the serious nature and gravity in which the incident had taken place, and therefore, ought not to have released the opponents on bail. In my opinion the submission of the learned counsel for the applicant does not deserve any merit merely because the complainant side had sustained serious injuries which resulted in death of one person, and the offence was of serious nature, bail granted by the learned Addl. Sessions Judge cannot be cancelled ( See 1994 (1) G.L.H. (UJ) 7 Parsottam Manilal Patel vs. Dwarkabhai Mohanbhai Patel and others). Once the discretion has been exercised by the learned Addl. Sessions Judge, in my opinion, if it is not arbitrary, illegal or erroneous exercise of discretion, then it cannot be interfered with.

16. The question which arises for consideration of this Court is whether the bail, which is granted to the opponent Nos. 1 to 6 require to be cancelled under Section 439 (2) of the Code. Learned advocate Mr.B.B.Naik for the applicant has submitted that this is a fit case wherein the bail granted to the opponent Nos. 1 to 6 No.2 should be cancelled. In support of the submission, reliance is placed on the decisions (i)A.I.R.

1978 SC 179 Gurcharan Singh and others vs. State ( Delhi Administration) and (ii) A.I.R. 1978 SC, 961, The State through the Delhi Administration v. Sanjay Gandhi.

17. On the other hand, it is submitted by learned advocate Mr. Y.S.Lakhani, for the opponent Nos. 1 to 6 that a bail can be cancelled in rarest of rare cases where the person released on bail abused liberty or commits any breach of conditions imposed while releasing him on bail. In support of his submission, learned advocate Mr. Y.S.Lakhani has relied upon the judgment of the Supreme Court in the case of Dolatram vs. State of Haryana, reported in 1995 S.C.C.(Cri) 237, and also the judgment of the Supreme Court in the case of Aslam Babalal Desai vs. State of Maharashtra, reported in AIR 1993 Supreme Court 1, wherein, the Supreme Court has set out grounds for cancellation of bail in paragraph 10 as under :

"As stated in Raghubir Singh's case (AIR 1987 SC 149) the grounds for cancellation under Sections 437(5) and 439 (2) are identical, namely, bail granted under Section 437 (1) or (2) or 439 (1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

18. The learned advocate for the opponent Nos. 1 to 6 has further submitted that the principles on which a bail can be granted are different than the principles on which a bail can be cancelled. Cancellation of such bail is harsh order, because it interferes with the liberty of the individual and, hence, it must not be lightly resorted to.

19. The Apex Court in the case of Dolatram vs. State

of Haryana (Supra ) has set out the grounds for cancellation of bail, as under :

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive ) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. "

20. The decision rendered in case of Gurcharan Singh and others v State (Delhi Administration ) (Supra ) relied by the learned counsel for the applicant will not apply to the facts of the present case. In the abovereferred case all the accused persons ranging from the Deputy General of Police and the Superintendent of Police at the top down to some police constables were alleged to be a party to a criminal conspiracy to kill one Sunder and they were alleged to have caused his death by drowning him in the Jamuna river pursuance of the conspiracy. During the preliminary inquiry, all the six alleged eye-witnesses did not support the prosecution case, but gave statements in favour of the accused. During the course of the investigation, seven witnesses including six persons already examined during the preliminary inquiry, gave statements implicating the accused in support of the theory of prosecution. The witnesses were also produced before the Magistrate for recording their statements under S.164, Cr.P.C. All the seven witnesses continued to support the prosecution case in their statements on oath recorded under S.164, Cr.P.C. Six eye witnesses who made discrepant statements and had supported the defence version at one stage, explained that some of the accused had exercised pressure on them to make statements in favour of the defence. In the

above background the Delhi Administration moved the High Court for cancellation of the bail granted by the Sessions Judge alleging that there was grave apprehension of the witnesses being tampered with by the accused persons on account of their position and influence which they wielded over the witnesses. The High Court had cancelled the bail on the apprehension shown by the prosecution. The said order of cancellation of bail was challenged in the Apex Court, wherein the Supreme Court held that the High Court had correctly appreciated the entire position and the discretion exercised by the High Court in cancelling the bail cannot be interfered with in the exercise of powers under Article 136 of the Constitution of India.

21. In the present case, no such apprehension has been shown by the Investigating Agency that the opponent Nos. 1 to 6 are likely to tamper with the evidence. On the contrary, the opponent Nos. 1 to 6 were released on bail in April 1998, no grievance is made that they had tampered with the prosecution witnesses or abused their liberty. Therefore, the decision of Gurcharan Singh and others vs. State (Delhi Administration ) (Supra) will not apply to the facts of the present case.

22, Learned counsel for the applicant had also placed reliance on the decision reported in 1978 S.C., 961, The State through the Delhi Administration v. Sanjay Gandhi, (Supra ) wherein the Apex Court has held as under :

" The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases, when, by a preponderance of probabilities, it is clear that the accused is interfering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to be subversion of the judicial process."

23. In my view, the Investigating Agency has not complained that the accused are interfering with the course of justice by tampering with the witnesses or they have abused liberty while they were on bail. It is not brought to the notice of this court that the accused have committed any breach of conditions imposed in the order of bail. In view of these facts and circumstances, I am of the view that the decision of The State through the

Delhi Administration v Sanjay Gandhi (Supra ) relied on by the learned counsel for the applicant will not apply to the facts of the present case.

24. Bearing in mind the above principles laid by the Supreme Court in the cases of Aslam Babalal Desai and Dolatram (Supra ), in my opinion, the circumstances against the opponent Nos. 1 to 6 are not such that the bail granted in their favour should be cancelled. The Investigating Officer has not pointed out that the opponent Nos. 1 to 6 were having any antecedents or are having any criminal record. The Investigating Officer has not expressed any apprehension that, if the opponent Nos. 1 to 6 are released on bail, they would abuse their liberty or would tamper with the evidence of the prosecution or they would jump the bail. No prior antecedents or criminal record of the opponent Nos. 1 to 6 have been brought on record during the hearing of the bail application. Therefore, looking to the facts and circumstances of the case, I do not deem it fit to cancel the bail granted in favour of the opponent Nos. 1 to 6 bearing in mind the principles laid down by the Apex Court in the cases of Aslam Babalal Desai and Dolatram (Supra ), the opponents nos. 1 to 6 have not abused their liberty or tampered with the witnesses of the prosecution nor there is any breach of conditions of bail.

25. For the foregoing reasons, this application is dismissed. Rule discharged.

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